

1 QUINN EMANUEL URQUHART & SULLIVAN, LLP  
Charles K. Verhoeven (Bar No. 170151)  
2 charlesverhoeven@quinnemanuel.com  
David A. Perlson (Bar No. 209502)  
3 davidperlson@quinnemanuel.com  
50 California Street, 22nd Floor  
4 San Francisco, California 94111  
Telephone: (415) 875-6600  
5 Facsimile: (415) 875-6700

6 Kevin P.B. Johnson (Bar No. 177129)  
kevinjohnson@quinnemanuel.com  
7 Victoria F. Maroulis (Bar No. 202603)  
victoriamaroulis@quinnemanuel.com  
8 555 Twin Dolphin Drive, 5th Floor  
Redwood Shores, California 94065  
9 Telephone: (650) 801-5000  
Facsimile: (650) 801-5100

10 Attorneys for Samsung Electronics Co., Ltd.,  
11 Samsung Electronics America, Inc., and  
Samsung Research America, Inc.

12 **UNITED STATES DISTRICT COURT**  
13 **NORTHERN DISTRICT OF CALIFORNIA**  
14 **SAN FRANCISCO DIVISION**

15 HUAWEI TECHNOLOGIES CO., LTD., et al.,

16 Plaintiffs,

17 v.

18 SAMSUNG ELECTRONICS CO., LTD., et al.,

19 Defendants.

CASE NO. 16-cv-02787-WHO

20 **SAMSUNG'S CASE MANAGEMENT**  
**PROPOSAL**

21 SAMSUNG ELECTRONICS CO., LTD. &  
22 SAMSUNG ELECTRONICS AMERICA, INC.

23 Counterclaim-Plaintiffs,

24 v.

25 HUAWEI TECHNOLOGIES CO., LTD,  
HUAWEI DEVICE USA, INC., HUAWEI  
26 TECHNOLOGIES USA, INC., & HISILICON  
TECHNOLOGIES CO., LTD.

27 Counterclaim-Defendants.

Defendants Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., and Samsung Research America, Inc. (collectively, “Samsung”) respectfully submit this Case Management Proposal. Although Samsung had assumed throughout the meet and confer process that the parties would submit a joint proposal<sup>1</sup>, Huawei’s demand late this afternoon that its portion of the joint submission include a nine-page brief that reargues the merits of its request for bifurcation—in direct violation of the Court’s instructions—left Samsung with no choice but to submit its own proposal separately.

### **SAMSUNG’S PROPOSAL**

Samsung proposes the following procedures, which are based on the case narrowing procedures implemented by Judge Koh in *Apple Inc. v. Samsung Electronics Co., Ltd. et al.*, 5:12-cv-630-LHK. *See* 5:12-cv-630-LHK, Dkt. 394, 471. At the time Judge Koh implemented the case narrowing order (Dkt. 471), the case involved 16 patents, including both SEPs (as here) and non-SEPs, as well as breach of contract, FRAND, and antitrust claims, just like this case. *See id.* at Dkt. 1, 107, 194. Samsung’s proposal indisputably meets the Court’s goal to “reduce claims and prior art references” as requested during the April 19, 2017 hearing. *See* April 19, 2017 Hrg. Tr. at 22:23-23:12.

Date	Narrowing Procedure
10 days after claim construction order	The parties will narrow the patent claims to 22 claims per side and 22 accused products per side. <sup>2</sup>
One week after fact discovery cutoff	The parties will be required to dismiss without prejudice 4 to 6 patents (if not already dismissed), so that neither side

<sup>1</sup> Minute Entry (Dkt. 126) (“The Court directs that counsel confer further in an attempt to reach agreements which will limit the scope of trial. In two weeks counsel should submit a joint proposal or competing proposals for the Court’s consideration.”); Order at 11 (Dkt. 130) (“During the hearing, we discussed how this case can proceed on a manageable scale. I directed the parties to file joint or competing proposals by Wednesday, May 3, 2017.”).

<sup>2</sup> Huawei mentions a “representative products stipulation” in its Case Management Proposal, but fails to point out that the parties in *Apple v. Samsung* did not agree on a representative products stipulation, and Judge Koh did not require one. The only products in the case were the products selected by the parties during the case narrowing process.

	will be asserting more than six patents. In addition, the parties will be required to limit their asserted claims to 15 per side, and limit their accused products to 18 per side.
Two weeks after fact discovery cutoff	The parties will be required to reduce their invalidity references/systems/combinations <sup>3</sup> to 45 per side.
One week after close of expert discovery	The parties will be required to dismiss without prejudice one patent from the case (if not already dismissed) so that neither side will be asserting more than five patents. In addition, the parties will be required to limit their asserted claims to 10 per side and limit their accused products to 15 per side.
Two weeks after close of expert discovery	The parties will be required to reduce their invalidity references/systems/combinations to 25 per side.
July 20, 2018 (approximately one month prior to the final pre-trial conference)	The parties will be required to limit their asserted claims to 5 per side and limit their accused products to 10 per side.
July 27, 2018 (approximately three weeks prior to the final pre-trial conference)	The parties will be required to reduce their invalidity references/systems/combinations to 15 per side.

The parties' non-patent infringement claims, including antitrust, FRAND, and breach of contract, will proceed in parallel with the patent claims and will be tried at the same time as the patent claims.<sup>4</sup>

### **SAMSUNG'S ATTEMPTS TO MEET AND CONFER**

At no time during the meet and confer process did Huawei reveal that it intended to submit a full brief as its part of the "Joint Case Management Proposal" that would reargue bifurcation in blatant disregard of the Court's instructions not to re-argue Huawei's earlier request for bifurcation. *See* Hrg. Tr. at 23:18-22 ("Assume that this judge is going to make us try the case the way that he set it out. I'm not going to do FRAND first. We're just going to do

<sup>3</sup> Each 35 U.S.C. § 102 reference/system, or § 103 combination counts as a single "invalidity reference/system/combination."

<sup>4</sup> Samsung understands that the Court's preference is to try this case in a single, two-week trial. To the extent the Court determines additional days of trial are appropriate, Samsung has no objection to additional days for a single trial.

1 this case that's in front of us. What is the most efficient way that we can try the case in two  
 2 weeks?"); *id.* 24:10-14 ("[W]hy don't you in two weeks give me your proposal on how you're  
 3 going to reduce claims and try the case without doing FRAND first. Just you can footnote that  
 4 you think it's a terrible idea, but give me otherwise your best idea.")

5 Samsung shared its proposal on April 28 and repeatedly reminded and requested Huawei  
 6 to send its portion of the proposal so that the parties could assess whether there were any areas  
 7 of agreement. *See* Declaration of Marissa Ducca in Support of Samsung's Case Management  
 8 Proposal ("Ducca Decl."), ¶¶2-4, 6-9. But Huawei inexplicably failed to do so, ignoring  
 9 Samsung's requests that the parties discuss the kinds of case-narrowing options that the Court  
 10 had asked the parties to consider, and instead offering only a bifurcation proposal. *See id.* at  
 11 ¶¶5, 10. At 4 p.m. PDT today—the day the submission was due—Huawei sprang its portion of  
 12 the Joint Case Management Proposal on Samsung. Contrary to the Court's instructions, and  
 13 without previously revealing its intent to do so, Huawei chose to include what is essentially a 9-  
 14 page brief that reargues the merits of bifurcation.<sup>5, 6</sup>

15 Huawei's actions are contrary to the Court's express instructions and particularly unfair  
 16 given that its late disclosure left Samsung with no time to address the specifics of Huawei's  
 17 positions in time to complete the meet and confer and submit the required proposal by the  
 18 Court's deadline. Samsung understands that Huawei is submitting its own Case Management  
 19 Proposal tonight. *See* Ex. J, May 3, 2017, 4:35 p.m. PDT, Ducca Email. To the extent that  
 20 proposal includes the late-disclosed arguments on bifurcation, although Samsung believes those  
 21 arguments do not merit further consideration, Samsung will respond to them within a reasonably  
 22 practicable time in a further written submission.

---

23  
 24 <sup>5</sup> The Ducca Decl., submitted herewith, sets forth in detail the full chronology of the parties'  
 25 attempt to meet and confer on these issues.

26 <sup>6</sup> Huawei also included a counter-proposal to Samsung's case management proposal, which  
 27 Samsung saw for the first time at 4 p.m. PDT. Samsung maintains that its proposal is more  
 28 appropriate for a trial with limited time, as it was used in *Apple v. Samsung*. Like with Huawei's  
 bifurcation issues, Samsung has not had the chance to explain the reasoning underlying its  
 proposal in a brief. Samsung will respond within a reasonable time in a further written  
 submission.

1 DATED: May 3, 2017

Respectfully submitted,

2 QUINN EMANUEL URQUHART &  
3 SULLIVAN, LLP

4 By /s/ Victoria F. Maroulis

Charles K. Verhoeven

5 Kevin P.B. Johnson

6 Victoria F. Maroulis

David A. Perlson

7 *Attorneys for Samsung Electronics Co., Ltd.,*  
8 *Samsung Electronics America, Inc., and*  
9 *Samsung Research America, Inc.*